IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6924 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN DANABHAI SONDARVA

Versus

DEPUTY ENGINEER

Appearance:

1. Special Civil Application No. 6924 of 2003

MR GK RATHOD for Petitioner No. 1

RULE SERVED for Respondent No. 1,3-4

MR SAURABH J MEHTA for Respondent No. 2

MR PRADIP D BHATE A.G.P. for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/03/2004

ORAL JUDGEMENT

It is very unfortunate that the petitioner who

has fully succeeded in the Reference that was filed by her before the Labour Court at Junagadh, by way of Reference (L.C.J.) No. 158 of 1991, has still to test the fruits of her success. The award that has been passed in her favour on 28th January, 1999, whereby order terminating her service has been quashed and respondents nos. 1 and 2 have been directed to reinstate her on her original post with continuity of service and payment of 100% backwages together with all other incidental benefits, has not been complied with.

1.1. The petitioner was working as daily wager with the Road & Building Department at the wage of Rs.20=00 per day. Without any justification and without written order, her service was terminated. Repeatedly she requested for taking her back in the employment but the same was not done. It is her say that before terminating her service, no notice was given nor any salary in lieu of the notice was paid to her. She, therefore, raised dispute which was referred to initially for conciliation to the Conciliation Officer, but since efforts failed, the dispute was referred to the Labour Court for adjudication.

1.2. Before the Labour Court, it was averred by the petitioner that she was working since 27th January, 1983 with respondent no. 1 on daily wage basis. In the year 1988, she was relieved from her service by oral order and at the time of termination of her service, no notice was given, salary in lieu of the notice was paid to her. She, therefore, prayed that order terminating her service be quashed and she be reinstated on her original post. The said claim was resisted by the present respondents nos. 1 and 2. According to them, it was true that she was working as labour at Rana Kandorna Khirsarna, in Porbandar since 27th January, 1983, but she had remained absent from 1st February, 1988 without any reason and, therefore, continuous absence from service was considered as voluntarily abandonment of the employment. According to the respondents, her service was not terminated by them, but she had voluntarily not reported for duty.

2. At the hearing of the proceedings, both the sides led oral as well as documentary evidence. At the end of the hearing, the Labour Court, came to the conclusion, that the petitioner was relieved from the service and the said order was in the nature of retrenchment under Section 2 (oo) and while doing so, there was no compliance of the requirement envisaged under Section 25-F of the Industrial Disputes Act, 1947. The Labour Court held that the order of termination of service was

bad in law. It, therefore, directed that the petitioner be reinstated on her original post with continuity of service and also to pay 100% backwages together with all other incidental benefits. As stated above, this direction is still not complied with.

2.1. Since repeated efforts of the petitioner right from the month of May, 1999, to report on duty did not meet any favourable response from respondents nos. 1 and 2, she approached respondent no. 3 for taking appropriate steps against them for noncompliance of the direction of the Labour Court. It appears that except for writing a letter, nothing more has been done by respondent no. 3 in that direction. Ultimately, the petitioner was constrained to approach this Court by filing the present petition in the month of May, 2003.

3. The record of the petition shows that on 11th November, 2003, this Court (Coram : Ravi R. Tripathi, J.) while admitting the matter, passed the order directing respondents nos. 1 and 2 to comply with the order of reinstatement immediately. It is rather unfortunate that even this order has not been complied with by respondents nos. 1 and 2 till this date.

3.1. Considering the aforesaid facts it is obvious that unless any stay order was obtained by respondents nos. 1 and 2, directions given by the Labour Court were required to be implemented or acted upon by them. Mr. G.K. Rathod, learned advocate appearing for the petitioner has submitted that respondents nos. 1 and 2 have shown total disregard to the direction given by the Labour Court in its award as well as by this Court by its order dated 11th November, 2003. When there was no order of stay against implementation of the Labour Court's award which has been passed in the month of January, 1999, it was incumbent upon respondents nos. 1 and 2 to reinstate the petitioner on her original post.

3.2. As against that Mr. Saurabh Mehta learned advocate appearing for respondents nos. 1 and 2 has submitted that he has already filed petition in the year 2000 against the award, but unfortunately for want of cooperation from his client and certain papers, he could not remove office objections raised in his petition and, therefore, it was dismissed for non prosecution. Of course, now he has taken appropriate steps to get it restored. In these circumstances, stay against implementation of the award could not be obtained.

3.3. When the award in favour of the petitioner has

been made in January, 1999 and the direction has been given for reinstatement together with 100% backwages, it was incumbent upon the respondents to reinstate her on her original post immediately in compliance of the Labour Court's award. If that had been done, the petitioner could have started earning her salary within a short time of the award. Further if respondents nos. 1 and 2 had obtained stay against the order of reinstatement, the petitioner could have received the benefit of Section 17-B of the Industrial Disputes Act. Unfortunately, neither of the situations is existing today and the resultant effect is that the petitioner, despite the award in her favour to the fullest extent, is starving. It is strange that the concerned officers i.e. respondents nos. 1 and 2 have audacity to defy not only the Labour Court's direction but also the mandatary direction given by this Court. They are required to be strictly dealt with. However, with a view to give them one more chance, to amend their mistake, following direction is required to be given by allowing this petition.

3.4. Respondents nos. 1 and 2 are directed to reinstate the petitioner on her original post on or before 31st March, 2004 and to pay to her all the incidental benefit and 100% backwages. The backwages also are required to be paid on or before that date. Her service is to be treated as continuous one. If the respondents fail to carry out this direction, respondent no. 3 and 4 are directed to initiate appropriate criminal proceedings under the provisions of Section 29 of the Industrial Disputes Act without any delay. It may also be made clear that if backwages are not paid by 31st March, 2004, respondents nos. 1 and 2 will have to personally pay the interest thereon at the rate of 12% from the date of the award till the payment.

With these directions, the petition is allowed.
Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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